

THIS LEASE made the 15 day of May, 2017,

BETWEEN:

THE CORPORATION OF THE TOWN OF PELHAM
(the "Landlord")

AND

WELLSPRING NIAGARA CANCER SUPPORT FOUNDATION
(the "Tenant")

WITNESSETH THAT THE PARTIES AGREE AS FOLLOWS:

Article 1 — Basic Terms, Definitions

1.1 Basic Terms

- (a) Landlord: The Corporation of the Town of Pelham
Address: 20 Pelham Town Square, Fonthill ON L0S 1E0
- (b) Tenant: Wellspring Niagara Cancer Support Foundation
Address:
- (c) Lands: the lands illustrated in Schedule "A", legally described in Schedule "B"
- (d) Area of the Lands: 7287.6 square metres (1.8 acres)
- (e) Construction Period: _____ 1, 2017 to _____, 2018.
Term: Twenty (20) years, subject to Section 2.2
Commencement Date: _____ 1, 2017
End of Term: _____, 2037, subject to Section 2.2
- (f) Permitted Use (Section 8.1): provision of non-medical support for cancer patients and their families.
- (g) Annual Ground Rent: One (\$1.00) dollar per year
- (h) Extension Rights: set out in Article 3
- (i) Schedules forming part of this Lease:
 - Schedule "A", Sketch of Lands - Part 1 on Reference Plan 59R- _____
 - Schedule "B", Legal Description
 - Schedule "C", List of Initial Plans

1.2 Definitions

In this Lease, unless there is something in the subject matter or context inconsistent therewith, the following terms have the following respective meanings:

- (a) "Additional Rent" means all sums of money or charges required to be paid by the Tenant under this Lease except Rent either to the Landlord or otherwise including, without limitation, payment of Realty Taxes and charges for water, gas, electricity, telephone and other utilities and other charges which may give rise to a lien upon the interest of the Landlord in the Lands, whether or not the same are designated as "Additional Rent";
- (b) "Business Day" means a day other than a Saturday, Sunday or other day which is a statutory holiday in the province in which the Lands are located;
- (c) "Changes" has the meaning set out in Section 7.4;
- (d) "Construction Period" means the period specified in Section 1.1(e);

- (e) "Event of Default" has the meaning set out in Section 13.1;
- (f) "Fair Market Value" means, in respect of the Lands, the amount that the Lands would realize if the Lands were vacant, unimproved, free from encumbrances and immediately available for new development, and may lawfully be used: (i) for the purposes for which they are to be used under the terms of this Lease; or (ii) for the purposes for which they might on the relevant date lawfully be used, whichever purpose is the greatest, highest and most valuable purpose then available, and without regard to the existence of this Lease or the Improvements then standing thereon, and were sold in the open market by a willing seller to a willing buyer;
- (g) "Ground Rent" means the Ground Rent payable by the Tenant pursuant to Article 4;
- (h) "Improvements" means all buildings, fixed improvements, structures and other installations located on, in or under any portion of the Lands at any time throughout the Construction Period and the Term, including any additions, substitutions, alterations or replacements thereto or thereof;
- (i) "Initial Improvements" means the initial Improvements to be constructed by the Tenant in accordance with the Initial Plans as the same may be amended in accordance with Section 6.4 and other terms hereof;
- (j) "Initial Plans" means the initial conceptual plans for the Initial Improvements as prepared by the Tenant's Architect and approved by the Landlord prior to the date of execution hereof, which Initial Plans are listed in Schedule "C";
- (k) "Initiating Party" has the meaning set out in Section 14.2;
- (l) "Lands" means the lands identified in Section 1.1(c) and having the area as set out in Section 1.1(d);
- (m) "Lease" means this lease, as amended from time to time;
- (n) "Realty Taxes" means all real property taxes, rates, duties and assessments (including local improvement rates), impost charges or levies, whether general or special, that are levied, charged or assessed from time to time by any lawful authority, whether federal, provincial, municipal, school or otherwise, and any taxes payable by the Landlord which are imposed in lieu of, or in addition to, any such real property taxes, whether of the foregoing character or not, and whether or not in existence at the date hereof, and any such real property taxes levied or assessed against the Landlord on account of its ownership of the Lands or its interest therein, but specifically excluding any taxes assessed upon the income of the Landlord;
- (o) "Rent" means all Rent and Additional Rent;
- (p) "Responding Party" has the meaning set out in Section 14.3;
- (q) "Substantial Breach" means any breach which would cost at least \$10,000.00 to cure;
- (r) "Substantial Default" means:
 - (i) a Substantial Breach of an obligation arising from the construction obligations in Article 6, the compliance with laws obligations in Section 8.2, the maintenance, repair and replacement obligations in Section 7.2, the obligations in Section 7.4 ;
 - (ii) a breach of an obligation which has resulted in cancellation of insurance coverage where the Tenant has not, prior to or concurrent with such cancellation, replaced such coverage with comparable coverage, or a breach of an obligation where there has been a notice of cancellation of insurance coverage which has not been cured and where the Tenant has not, within the period of time set out in such notice (or

- within ten (10) days where no period is set out therein), replaced such coverage with comparable coverage or which is otherwise a Substantial Breach of the obligations respecting insurance;
- (iii) a failure to discharge a lien on the Lands unless the Tenant is contesting the same pursuant to Section 7.7; or
 - (iv) assigning, subletting or changes in corporate ownership contrary to the terms of Article 10; and
 - (s) "Term" means the period specified in Section 1.1(e) and, where the context requires, any renewal, extension or overholding thereof

Article 2 — Demise and Term

2.1 Demise

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord demises and leases to the Tenant, and the Tenant rents from the Landlord, the Lands. The Tenant accepts the Lands on an "as is" basis.

2.2 Term

The Term shall commence on the Commencement Date, run for the period set out in Section 1.1(e), and end on the date set out in Section 1.1(e), unless terminated earlier pursuant to the provisions of this Lease.

2.3 Construction Period

The Tenant shall carry out the construction of the Initial Improvements during the Construction Period in accordance with the provisions of Article 6 hereof.

2.4 Overholding

If, at the expiration of the initial Term or any subsequent renewal or extension thereof, the Tenant shall continue to occupy the Lands without further written agreement, there shall be no tacit renewal of this Lease, and the tenancy of the Tenant thereafter shall be from month to month only, and may be terminated by either party on one (1) month's notice. All terms and conditions of this Lease shall, so far as applicable, apply to such monthly tenancy.

Article 3 — Renewal of Lease

This lease shall be automatically renewed at the end of the initial term for an additional term of Twenty (20) years at the same annual rent, and thereafter at the end of each renewal term for an additional term of Twenty (20) years, provided that the Lands continue to be used as the Wellspring Niagara Cancer Support Centre in Pelham at the time of renewal of the lease. Should the Tenant not wish to renew the lease at the end of a term, the Tenant shall provide the Landlord with written notice that the lease will not be renewed not later than Six (6) months prior to the expiry of the lease term. Upon the expiration or termination of the Lease the provisions of Section 7.1 shall apply.

Article 4 — Rent

4.1 Covenant to Pay, Net Lease

The Tenant covenants to pay Rent as provided in this Lease. It is the intention of the parties that this is a net and carefree lease and that the Tenant shall pay as Additional Rent all charges, impositions and expenses of every nature and kind relating to the Lands as if it were an owner thereof in the manner hereinafter provided, and the Tenant hereby covenants with the Landlord accordingly.

The annual Ground Rent payable by the Tenant shall be One (\$1.00) per annum during the Term and any renewal term.

Article 5 — Additional Rent

5.1 Additional Rent

(1) In addition to the Rent reserved in favour of the Landlord, the Tenant shall, throughout the Construction Period and the Term, pay to the Landlord or as otherwise provided in this Lease, in lawful money of Canada, without any deduction, abatement or set-off whatsoever, as Additional Rent, the following costs incurred and attributable to the Lands and Improvements:

- (a) all Realty Taxes levied, rated, charged or assessed on or in relation to the Lands;
- (b) all charges, costs, accounts and any other sums payable by reason of the supply of the utilities and services to the Lands; and
- (c) all other sums, amounts, costs, cost escalations and charges specified in this Lease to be payable by the Tenant.

(2) All of the payments set out in this Lease shall constitute Rent or Additional Rent, and shall be deemed to be and shall be paid as rent, whether or not any payment is payable to the Landlord or otherwise, and whether or not as compensation to the Landlord for expenses to which it has been put. The Landlord has all the rights against the Tenant for default in payment of Additional Rent that it has against the Tenant for default in payment of Rent.

5.2 Realty Taxes

The Tenant covenants to pay to the lawful taxing authorities, on or before the due date therefor, as Additional Rent, all Realty Taxes. The obligation of the Tenant to pay Realty Taxes shall commence as of the start of the Term, and shall be apportioned for the current taxation year between the Landlord and Tenant as at such date on a *per diem* basis. Upon the expiry or termination of this Lease, Realty Taxes during the taxation year of termination shall be similarly apportioned between the parties as at the termination date. If the Tenant fails to pay any Realty Taxes when due to the appropriate taxing authorities in situations where the Tenant (or persons on its behalf) is not contesting Realty Taxes in accordance with the provisions of Section 5.3, then the Landlord may itself, after notice to the Tenant as required herein, pay the Realty Taxes, and the amount paid by the Landlord on account of Realty Taxes shall be immediately repaid by the Tenant to the Landlord as Additional Rent under this Lease.

5.3 Contesting Realty Taxes

The Tenant shall have the right, in the name of the Landlord or otherwise, at the Tenant's expense, by appropriate proceedings conducted diligently and in good faith, to contest or apply for the reduction of the amount, legality or mode of payment of any Realty Taxes in respect of

the Lands or any portion thereof or any assessments or valuations with respect thereto. The Landlord shall provide any consents, authorizations and other assurances as may be required in order for such Realty Taxes to be contested or such applications to be made and proceeded with. During the period of any *bona fide* contesting or application, the Tenant may defer the payment of Realty Taxes to the extent permitted under applicable legislation, and no default shall be deemed to have occurred in the Tenant's obligations to pay Realty Taxes by reason of such deferral. The Tenant shall be entitled to any rebate of any Realty Taxes unless such Realty Taxes have been paid by the Landlord in accordance with Section 5.2 and the Tenant has not reimbursed the Landlord.

5.4 Utilities and Services

The Tenant shall be solely responsible for and shall promptly pay to the appropriate utility suppliers, as Additional Rent, all charges for water, gas, electricity, telephone telecommunications and other utilities and services used or consumed in, and any other charges levied or assessed on or in respect of or services supplied to, the Lands and Improvements. In no event is the Landlord liable for, nor has the Landlord any obligation with respect to, an interruption or cessation of or a failure in the supply of any utilities, services or systems in, to or serving the Lands or Improvements.

Article 6 — Construction of Initial Improvements

6.1 Tenant to Construct Initial Improvements

The Tenant agrees to erect the Initial Improvements on the Lands. The Initial Improvements shall be constructed and located entirely within the boundaries of the Lands. The Tenant shall construct and complete the Initial Improvements expeditiously and in good and workmanlike manner and in accordance with the Initial Plans and provisions of this Article, and in particular:

- (a) shall cause the Initial Improvements to be Substantially Completed not later than the end of the Construction Period (but subject to extensions of time granted pursuant to Section 6.2); and
- (b) shall cause the Initial Improvements to be fully completed in accordance with all the provisions of this Lease with reasonable diligence thereafter.

6.2 Extensions of Time for Construction of Initial Improvements

If the Tenant:

- (a) has been delayed in the commencement of construction of the Initial Improvements for a period of up to three (3) months and the delay(s) render it unlikely or uncertain that the Initial Improvements will be substantially completed by the end of the Construction Period; or
- (b) has been delayed in constructing the Initial Improvements by reason of strikes, lockouts, governmental restrictions, acts of God, unavailability of material and labour or similar causes, all being beyond the control of the Tenant, and the delay(s) render it unlikely or uncertain that the Initial Improvements will be substantially completed by the end of the Construction Period; and

- (c) has used all reasonable diligence to overcome the delays and has proceeded with the construction of the Initial Improvements to the extent possible,

then the time for compliance with Section 6.1 shall be extended by a period not longer than the length of the delay imposed by the causes set out in paragraphs 6.2 (a) and (b) above, which will be reasonably required for the Tenant substantially to complete the Initial Improvements with reasonable diligence.

In the event that the Tenant experiences delays in constructing the Initial Improvements for reasons other than those set out above, and provided that the Tenant is proceeding with the construction of the Initial Improvements, the Parties agree that they shall negotiate in good faith to reach agreement on a reasonable extension of the Construction Period.

6.3 Commencement of Construction of Initial Improvements

Before commencing excavation or any work on the Lands for the construction of the Initial Improvements, the Tenant shall have:

- (a) furnished to the Landlord proof of the insurance required by Section 6.6; and
- (b) obtained from the contractor the indemnity, insurance and performance bonds required by the contract.

6.4 Duties of Tenant in Construction

The Tenant shall perform and comply with the following covenants and requirements in the construction of the Initial Improvements:

- (a) the Initial Improvements shall be constructed in all respects in accordance with the Initial Plans, subject to such changes as may be required by governmental authorities or otherwise as approved in writing by the Landlord, such approval not to be unreasonably withheld or delayed;
- (b) all necessary building permits shall be obtained and all municipal by-laws and legal requirements pertaining to the conduct of the work shall be complied with;
- (c) the construction work shall be conducted expeditiously in a good and workmanlike manner and otherwise in accordance with the provisions of this Lease;
- (d) the Tenant covenants and agrees to deliver to the Landlord, from time to time as available, copies of the following in respect of the Initial Improvements:
 - (i) soil tests;
 - (ii) architects' and development plans and drawings;
 - (iii) consultants' reports;
 - (iv) applications to amend by-laws;
 - (v) site plan applications and approvals;
 - (vi) building permit applications;
 - (vii) building permits issued; and
 - (viii) all other documents or information pertaining to the development of the Initial Improvements in the possession or control of the Tenant; and
- (e) the Tenant shall promptly pay when due all proper accounts for work done or materials furnished under all contracts which it has entered into relating to the construction of the Initial Improvements, but this shall not prevent the Tenant from retaining any amounts

claimed due are required to be retained under the provisions of the *Construction Lien Act* (Ontario).

6.5 Fire and Liability Insurance During Construction

(1) The Tenant shall obtain or shall cause its contractor or contractors to obtain prior to the commencement of construction of the Initial Improvements, and shall maintain and keep in force until the insurance required under Article 9 has been obtained, insurance naming the Landlord and the Tenant as insureds and:

- (a) protecting both the Tenant and the Landlord (without any rights of cross claim or subrogation against the Landlord) against claims for personal injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Lands and from any cause, including the risks occasioned by the construction of the Initial Improvements, and to an amount of not less than five million dollars (\$5,000,000) for any personal injury, death, property or other claims in respect of any one accident or occurrence; and
- (b) protecting both the Tenant and the Landlord from loss or damage (without any rights of cross claim or subrogation against the Landlord) to the Initial Improvements and all fixtures, equipment, improvements and building materials on the Lands from time to time, both during and after construction (but which may be by policies obtained from time to time covering the risk during different phases of construction) against fire and extended perils under a standard extended form of fire insurance policy in such amounts and on such terms and conditions as would be carried by a prudent owner of a similar project during construction to the full insurable value thereof at all times (to be computed upon a replacement cost basis with deduction only of the cost of excavation and foundations and of the value of building materials from time to time on the site but not incorporated in the Initial Improvements, and in any event in an amount sufficient to prevent the Landlord being deemed a co-insurer).

Article 7 — Ownership, Maintenance and Repair

7.1 Ownership of Improvements and Fixtures

(1) Subject to the provisions of this Article, the Improvements are intended to be the property of the Tenant. upon the expiration or termination of the Lease, and shall be deemed, as between the Landlord and the Tenant during the Construction Period and the Term, to be the separate property of the Tenant and not of the Landlord, but subject to and governed by all the provisions of this Lease applicable thereto. Upon the termination of the lease, the Landlord shall have the option to purchase the Improvements for the fair market value ("FMV") thereof as determined by a qualified real property appraiser jointly retained by the Tenant and the Landlord to determine the FMV of the Improvements, the FMV of the Lands only and the FMV of the Lands and the Improvements. Should the Landlord not elect to purchase the Improvements, then the Lands shall be listed for sale at the FMV as determined by the appraisal. Upon the completion of the sale, the net proceeds of the sale shall be divided as follows:

- (a) The Landlord would receive the percentage of the net sale proceeds equal to the FMV of the Lands only over the FMV of the Lands including the Improvements;
- (b) The balance of the net sale proceeds would be paid to the Tenant.

The Landlord's absolute right to purchase the Improvements which will arise upon the termination of this Lease takes priority over any other interest in the Improvements which may now or hereafter be created by the Tenant, provided that all dealings by the Tenant with the Improvements which in any way affect title thereto shall be made expressly subject to this right of the Landlord, and the Tenant shall not assign, encumber or otherwise deal with the Improvements separately from any permitted dealing with the leasehold interest under this Lease, to the intent that no person who does not at the same time hold a like interest in the Improvements shall hold or enjoy any interest in this Lease acquired from the Tenant.

(3) The Tenant shall, at or immediately before the expiration of the Term, remove its furniture, chattels and other usual tenants' fixtures not forming any part of the structure of the Improvements or any building services.

7.2 Maintenance and Repair of Lands and Improvements

The Tenant shall, at its own cost and expense, during the entire Term, keep in good order and condition the Lands and Improvements, and the appurtenances and equipment thereof, both inside and outside, including, but not limited to, fixtures, walls, foundations, roofs, vaults, elevators and similar devices, heating and air-conditioning equipment, sidewalks on the property, yards and area ways, water and sewer mains and connections, water, gas, electric and telecommunications facilities and conduits, and all other fixtures in and appurtenances to the Lands and Improvements and machinery and equipment used or required in the operation thereof, whether or not enumerated herein, and shall make any and all necessary repairs, replacements, substitutions, improvements and additions, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, subject to reasonable wear and tear, having regard to the size, age, location and character of the Lands and Improvements and force majeure as set out in Section 15.2. Such repairs shall be completed in a good and workmanlike manner and in all respects consistent in quality and workmanship appropriate for a similar project in the vicinity, and shall meet the requirements of municipal and governmental regulations and the fire insurance underwriters.

7.3 Inspection by Landlord

The Landlord, its servants, agents and contractors shall be entitled to enter upon the Lands and Improvements at any time during normal business hours, on reasonable prior notice, for the purpose of inspecting the Lands and Improvements. The Tenant shall not be entitled to compensation for any inconvenience, nuisance or discomfort occasioned thereby. The Landlord shall take reasonable precautions and attempt to schedule such inspections so as not to unreasonably interfere with the operation of any subtenant's business and to minimize interference with the Tenant's use and enjoyment of the Lands and Improvements.

7.4 Repairs, Alterations, Improvements

(1) The Tenant may make any repairs, additions, alterations, replacements or improvements ("Changes") to or of any part of the Improvements or any other portions of the Lands provided that where the Changes materially affect the appearance or character of the exterior of the Improvements or to other exterior portions of the Lands, or will materially affect the structure of the Improvements, the Tenant shall first obtain the Landlord's written approval, which shall not

be unreasonably withheld. In determining whether or not to grant its approval to the Changes (where required), the Landlord shall have regard to whether the Tenant has forwarded satisfactory evidence and assurance to the Landlord that the following criteria shall be satisfied, namely, that:

- (a) the Changes shall comply with all applicable by-laws, zoning regulations, other governmental requirements and the requirements of the Tenant's fire insurance underwriters;
- (b) the Changes shall not weaken or endanger the structure of the Improvements; and
- (c) the Changes shall not materially adversely affect the value of the Lands and Improvements.

(2) The Changes shall be constructed by the Tenant, without cost to the Landlord, in a good and workmanlike manner, using first-class materials. Before requesting (where required) the Landlord's approval of any Changes, the Tenant shall submit to the Landlord conceptual plans of the proposed Changes for the Landlord's approval. Within thirty (30) days after receiving such plans from the Tenant, the Landlord shall advise the Tenant in writing whether or not it approves of the Changes, and if not, request modifications to such plans and other items. Within thirty (30) days after the Tenant receives the Landlord's request, the Tenant shall submit revised plans and other similar material for the Landlord's approval, and the parties agree to negotiate in good faith to modify the proposed Changes in order to obtain the Landlord's consent thereto within the limits of the Landlord's rights to withhold consent set out in this Section 7.4.

(3) All Changes shall be completed in accordance with all requirements of all governmental authorities and the fire insurance underwriter.</p>
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<h3>7.5 Waste, Nuisance
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<p>The Tenant shall not commit or suffer any waste or injury to the Lands and Improvements or any part thereof save and except any demolition and alteration respecting the Improvements on the Lands as herein permitted, and shall not use or occupy or permit to be used or occupied the Lands and Improvements or any part thereof so as to constitute a nuisance or for any illegal or unlawful purpose, nor in any manner which may contravene any lawful restrictions of the use thereof by any municipal or governmental authorities. The Tenant shall at all times, at its own expense, keep the sidewalks, curbs and passageways adjacent to the Lands and Improvements clean from rubbish, ice and snow and shall not encumber or obstruct the same or allow the same to be encumbered or obstructed in any manner. The Tenant shall not injure or disfigure the Lands and Improvements or permit the same to be injured or disfigured in any way save and except as herein permitted.
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<h3>7.6 Services
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<p>The Tenant shall install or cause to be installed all municipal services required to be constructed and installed in connection with any development of the Lands, and shall pay all levies, imposts, deposits and charges required by the municipality or any public utility or other authority having jurisdiction, which services may be installed as local improvements. The Tenant shall indemnify and save harmless the Landlord of and from all claims and demands relating to such services, it being the intention of the parties that the Landlord shall not be required at any time to pay any levies, imposts, deposits or other charges whatever in connection with the servicing or preparation of the Lands from time to time for building, use or occupancy. Without
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limiting the generality of the foregoing, the Tenant shall, at its own expense, install or cause to be installed paved roadways, sanitary sewers, storm sewers, sidewalks, curbs, street lighting, water pipes and underground hydro facilities as may be required by the municipality or other relevant authorities. The Tenant further covenants that it shall construct, renew and repair all services with respect to the Lands and Improvements as the municipality, utilities or other relevant authorities shall require from time to time without expense to or contribution from the Landlord. For greater certainty and notwithstanding anything contained herein, it is understood that the Tenant shall only be required to install or construct all required municipal services from the property line of the Lands.

7.7 Lien Claims

The Tenant shall not permit any lien to be registered against the Lands for any labour or materials furnished to, or with the consent of, the Tenant, its agents or contractors, in connection with any work performed or claimed to have been performed on the Lands or Improvements by or at the direction or sufferance of the Tenant. The Tenant shall have the right to contest the validity of, or the amount claimed under or in respect of, any such lien if such contesting shall involve no forfeiture, foreclosure or sale of the Lands or any part thereof but, until a final determination of such contest, the Tenant shall not be required to cause such lien to be discharged and released until after a final determination, at which time the Tenant shall cause such lien to be discharged.

Article 8 — Use, Compliance with Laws

8.1 Use

The Tenant covenants that at all times the use made of the Improvements shall be solely for the provision of non-medical support for cancer patients and their families, and for no other purposes. Should the Tenant cease to operate the Wellspring Niagara Cancer Support Centre in Pelham on the Lands, the Tenant may, with the consent of the Landlord, assign the lease to another community service organization which provides services to the Pelham community. The approval of the assignment of the lease shall be in the sole discretion of the Landlord.

8.2 Compliance with Laws

The Tenant covenants that at all times the use made of the Improvements shall be in conformity with all of the requirements of the zoning by-laws and any other municipal and governmental regulations which may affect the Lands.

Article 9 — Insurance and Indemnity

9.1 Tenant's Indemnity

The Tenant shall indemnify and save the Landlord harmless against any and all liabilities, claims, damages, interest, penalties, fines, monetary sanctions, losses, costs and expenses whatsoever (including, without limitation, counsel and solicitor's fees on a substantial indemnity basis, reasonable costs of professional advisors, consultants and experts) arising from injury to property or injury to any person, firm, partnership or corporation, caused by the use, occupancy or presence of the Tenant or any other person, firm, partnership or corporation at, in, on or upon

the Lands or Improvements.

9.2 Tenant's Insurance

(1) The Tenant shall, at its sole cost and expense, take out and maintain in full force and effect, at all times throughout the Term, the following insurance:

- (a) fire and extended perils under a standard extended form of fire insurance policy with standard extended coverage endorsements, in such amounts and on such terms and conditions as would be carried by a prudent owner of a similar project, having regard to the size, age and location of the project on the Lands, and such insurance shall add the Landlord as an additional insured, with coverage to the full insurable value thereof at all times (to be computed upon a replacement cost basis with deduction only of the cost of excavation and foundations); and
- (b) general liability and property damage insurance, including personal liability, contractual liability, tenants' legal liability, non-owned automobile liability and owners' and contractors' protective insurance coverage with respect to the Lands, written on a comprehensive basis with inclusive limits of at least five million dollars (\$5,000,000) for each occurrence, or such higher limit as the Landlord, acting reasonably, or any Mortgagee requires from time to time.

(2) All public liability insurance shall contain a provision for cross liability or severability of interest as between the Landlord and the Tenant. All the foregoing property policies shall contain a waiver of any right of subrogation or recourse by the Tenant's insurers against the Landlord or its contractors, agents and employees, whether or not any loss is caused by the act, omission or negligence of the Landlord, its contractors, agents or employees. The Tenant shall obtain, from the insurers under the building coverage, undertakings to notify the Landlord in writing at least thirty (30) days prior to any cancellation thereof. The Tenant shall furnish to the Landlord, upon written request, certificates of all such policies. The Tenant agrees that if the Tenant fails to take out or to keep in force such insurance or provide a certificate of every policy and evidence of continuation of coverage as herein provided, the Landlord shall have the right to take out such insurance and to pay the premium thereof and, in such event, the Tenant shall pay to the Landlord the amount paid as premium plus fifteen percent (15%), which payment shall be deemed to be Additional Rent payable on the first day of the next month following the said payment by the Landlord.

9.3 Evidence of Insurance

The Tenant shall furnish the Landlord with certificates or other acceptable evidence of all required insurance promptly upon request. Such insurance shall show the Landlord as an additional insured and all property insurance shall provide for a waiver of subrogation among insureds, and liability insurance shall provide for severability of interests and cross liability among insureds. All proceeds of any insurance shall first be used by the Tenant for the costs of repairing, reconstructing or replacing, as the case may be, the damaged or destroyed portions of the Improvements to the standard set out herein, except as otherwise provided for in this Lease.

Article 10 — Assignment

10.1 Assignment by Tenant

Save and except as set out in this Article and in Article 8, the Tenant shall not assign this Lease or sublet all or substantially all of the Lands and/or improvements without first obtaining the written consent of the Landlord, which consent may be unreasonably withheld or delayed.

10.2 Landlord's Sale

In the event of the sale, transfer or other disposition by the Landlord of its interest in the Lands or any part thereof, or the assignment by the Landlord of this Lease or any interest of the Landlord hereunder, the Landlord shall cause the purchaser, transferee or assignee thereof to directly assume the covenants and obligations of the Landlord hereunder and, thereupon, the Landlord shall, without further agreement, be freed and relieved of all liability with respect to such covenants and obligations under this Lease relating to matters arising from and after such assignment.

Article 11 — Quiet Enjoyment

11.1 Quiet Enjoyment

The Tenant, upon paying the Rent hereby reserved and performing and observing the covenants and provisions herein required to be performed and observed on its part, shall peaceably enjoy the Lands for the Term.

Article 12 — Damage and Destruction

12.1 Damage or Destruction of Improvements

The complete or partial destruction or damage, by fire or other casualty, of the Improvements shall not, except as provided herein, terminate this Lease or entitle the Tenant to surrender possession of the Lands or to have or to demand any abatement or reduction of the Rent or other charges payable under this Lease.

12.2 Restoration of Improvements

The Tenant covenants and agrees that, following the damage or destruction of any of the Improvements, it shall repair, reconstruct or replace such damaged or destroyed Improvements. All insurance moneys shall be made available to the Tenant pursuant to the terms of this Lease to pay for the cost of such restoration, reconstruction and repair and, should the insurance moneys be insufficient to pay the entire cost, the Tenant agrees to pay the deficiency.

12.3 Expropriation

If, at any time during the Construction Period or the Term, any public body or paramount authority shall take or expropriate the whole or a portion of the Lands and Improvements, then the following provisions shall apply:

- (a) the Landlord and the Tenant may exercise fully all the rights, remedies and claims for compensation which each may have under the applicable legislation. The Landlord and the Tenant shall inform each other fully of the claims for compensation made by each of them in the event of any expropriation, shall not claim compensation on any basis inconsistent with this Lease, and shall afford reasonable co-operation to each other in

the prosecution of any proper separate claims. The Landlord and the Tenant shall co-operate with each other regarding any expropriation of the Lands or any part thereof so that each receives the maximum award to which it is entitled at law; and

- (b) if such expropriation or compulsory taking does materially affect the Tenant's use or enjoyment of the Lands, then the Tenant may elect to terminate this Lease by notice to the Landlord within thirty (30) days of the notice of the expropriation and the Term shall terminate on the date upon which the expropriating or taking authority requires possession of the lands so expropriated or taken.

Article 13 — Default

13.1 Default and Right to Re-enter

Any of the following constitutes an Event of Default under this Lease:

- (a) the Tenant fails to pay any Rent or Additional Rent on the day or dates appointed for the payment thereof and fails to pay the same, with interest, within fifteen (15) days of written notice to the Tenant of such failure;
- (b) the Tenant fails to observe or perform any other of the terms, covenants or conditions of this Lease to be observed or performed by the Tenant, other than those terms, covenants or conditions set out in Section 13.1(a) or in Section 13.1(c) to (f), inclusive, the Landlord may, at any time thereafter, give notice of such failure to the Tenant; and if, such notice having been given by the Landlord to the Tenant, the Tenant shall not either:
 - (i) if the matter complained of in such notice is capable of being remedied by the payment of money, correct the matter complained of within fifteen (15) days of written notice to the Tenant of any such failure; or
 - (ii) if the matter complained of in such notice is not capable of being remedied by the payment of money:
 - (A) remedy such breach within thirty (30) days (or such shorter period as may be provided in this Lease) of written notice to the Tenant of any such failure;
 - (B) if such breach cannot reasonably be remedied within thirty (30) days or such shorter period, commence to remedy such breach within thirty (30) days of written notice to the Tenant of any such breach and thereafter proceed diligently to remedy such breach; or
 - (C) notify the Landlord within fifteen (15) days after the giving of such notice by the Landlord that the Tenant disputes the matters complained of in such notice, in which case, unless otherwise agreed between the Landlord and the Tenant, such issues shall be determined in accordance with Article 14; if such determination shall be adverse to the Tenant, wholly or in part, the Tenant shall, within fifteen (15) days after such determination shall have been made, remedy such breach;
- (c) the Tenant becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, an assignment or arrangement with its creditors, or any steps are taken or proceedings commenced by any person for the dissolution, winding-up or other termination of the Tenant's existence or the liquidation of its assets;
- (d) a trustee, receiver, receiver/manager or a person acting in a similar capacity is appointed

- with respect to the assets of the Tenant;
- (e) the Tenant makes an assignment or sublease or other Transfer other than in compliance with the provisions of this Lease; or
- (f) the Tenant abandons the Lands and Improvements.

13.2 Default and Remedies

If and whenever an Event of Default occurs, then, without prejudice to any other rights which it has pursuant to this Lease or at law, the Landlord shall have the following rights and remedies, which are cumulative and not alternative:

- (a) to terminate this Lease by notice to the Tenant or to re-enter the Lands and Improvements and repossess them and to remove all persons and property from the Lands and Improvements and store such property at the expense and risk of the Tenant or sell or dispose of such property in such manner as the Landlord sees fit without notice to the Tenant. No entry by the Landlord shall have the effect of terminating this Lease without notice to that effect to the Tenant;
- (b) to enter the Lands and Improvements as agent of the Tenant to do any or all of the following:
 - (i) relet the Lands and Improvements for whatever length of time and on such terms as the Landlord, in its discretion, may determine, and to receive the Rent therefor;
 - (ii) take possession of any property of the Tenant on the Lands and Improvements, store such property at the expense and risk of the Tenant, or sell or otherwise dispose of such property in such manner as the Landlord sees fit without notice to the Tenant;
 - (iii) make alterations to the Lands and Improvements to facilitate their reletting; and
 - (iv) apply the proceeds of any such sale or reletting, first, to the payment of any expenses incurred by the Landlord with respect to any such reletting or sale, second, to the payment of any indebtedness of the Tenant to the Landlord other than Rent, and, third, to the payment of Rent in arrears, with the residue to be held by the Landlord and applied to payment of future Rent as it becomes due and payable, provided that the Tenant shall remain liable for any deficiency to the Landlord;
- (c) to remedy or attempt to remedy any default of the Tenant under this Lease for the account of the Tenant and to enter upon the Lands for such purposes. No notice of the Landlord's intention to remedy or attempt to remedy such default need be given to the Tenant unless expressly required by this Lease, and the Landlord shall not be liable to the Tenant for any loss, injury or damages caused by acts of the Landlord in remedying or attempting to remedy such default. The Tenant shall pay to the Landlord all expenses incurred by the Landlord in connection therewith; and
- (d) to recover from the Tenant all damages, costs and expenses incurred by the Landlord as a result of any default by the Tenant including, if the Landlord terminates this Lease, any deficiency between those amounts which would have been payable by the Tenant for the portion of the Term following such termination and the net amounts actually received by the Landlord during such period of time with respect to the Lands.

Provided that the Landlord may not exercise its rights under (a) or (b) above in the event of

an Event of Default under Section 13.1(b) unless such default thereunder is a Substantial Default.

13.3 Costs

The Tenant shall pay to the Landlord all damages, costs and expenses (including, without limitation, all legal fees on a substantial indemnity basis) incurred by the Landlord in enforcing the terms of this Lease, or with respect to any matter or thing which is the obligation of the Tenant under this Lease, or in respect of which the Tenant has agreed to insure or to indemnify the Landlord.

13.4 Remedies Cumulative

Notwithstanding any other provision of this Lease, the Landlord may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant, either by any provision of this Lease, by statute or common law, all of which rights and remedies are intended to be cumulative and not alternative. The express provisions contained in this Lease as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord by statute or common law.

Article 14 — Settlement of Disputes

14.1 Disputes Subject to Arbitration

Any dispute arising between the Landlord and the Tenant hereunder where recourse is expressly provided to arbitration, or any other dispute arising between the Landlord and the Tenant with regard to this Lease which the parties jointly determine in writing shall be resolved by arbitration, shall be resolved in accordance with Sections 14.3 and 14.4.

14.2 Initiation of Proceedings

Wherever any arbitration is permitted or required under this Lease, arbitration proceedings shall be commenced by the party desiring arbitration (the "Initiating Party") giving notice to the other party (the "Responding Party") specifying the matter in dispute and requesting that it be resolved. The parties shall attempt to agree upon an arbitration procedure within fifteen (15) days after the giving of notice by the Initiating Party. If the parties cannot agree upon an arbitration procedure within such fifteen (15) day period, the Initiating Party shall, by written notice to the Responding Party, designate an arbitrator. The Responding Party shall, within fifteen (15) days thereafter, be entitled to appoint an arbitrator by written notice to the Initiating Party, and the two (2) arbitrators so appointed shall meet and select a third arbitrator acceptable to both of them. If the Responding Party fails to appoint an arbitrator within the fifteen (15) day period, then the arbitration will proceed before the arbitrator appointed by the Initiating Party who will act as a sole arbitrator. If the two (2) arbitrators so appointed are unable to agree upon a third arbitrator, then the Initiating Party shall make an application to the appropriate court pursuant to the *Arbitration Act, 1991* (Ontario) for the selection of a third arbitrator, and the provisions of the *Arbitration Act, 1991* (Ontario) shall govern such selection.

14.3 Arbitration Procedure

When the conditions set out in Section 14.2 have been fulfilled, the resulting arbitration panel shall thereupon proceed to hear the submissions of the parties and shall render a decision

within thirty (30) days after the appointment of the third arbitrator, if applicable. The decision of a majority of the arbitration panel shall be deemed to be the decision of the arbitration panel, and that decision shall be final and binding upon the parties and not subject to appeal. The arbitration panel shall have the authority to assess the costs of the arbitration panel against either or both of the parties; however, each party shall bear its own witness and counsel fees.

Article 15 — General

15.1 Force Majeure

Notwithstanding any other provision contained herein, in the event that either the Landlord or the Tenant should be delayed, hindered or prevented from the performance of any act required hereunder by reason of any unavoidable delay, including strikes, lockouts, unavailability of materials, inclement weather, acts of God or any other cause beyond its reasonable care and control, but not including insolvency or lack of funds, then performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such delay. The provisions of this Section 15.2 shall not under any circumstances operate to excuse the Tenant from prompt payment of Rent and/or any other charges payable under this Lease.

15.2 Effect of Waiver or Forbearance

No waiver by any party hereto of any breach by any other party of any of its covenants, agreements or obligations contained in this Lease shall be or be deemed to be a waiver of any subsequent breach thereof or the breach of any other covenants, agreements or obligations, nor shall any forbearance by any party hereto to seek a remedy for any breach by any other party be a waiver by the party so forbearing of its rights and remedies with respect to such breach or any subsequent breach. The subsequent acceptance of Rent by the Landlord shall not be deemed a waiver of any preceding breach by the Tenant of any term, covenant or condition regardless of the Landlord's knowledge of such preceding breach at the time of the acceptance of such Rent. All Rent and other charges payable by the Tenant to the Landlord hereunder shall be paid without any deduction, set-off or abatement whatsoever, and the Tenant hereby waives the benefit of any statutory or other right in respect of abatement or set off in its favour at the time hereof or at any future time.

15.3 Notices

(1) Any notice required hereunder shall be in writing and any such notice and any delivery, payment or tender of money or document(s) to the parties hereunder may be delivered personally or sent by prepaid registered or certified mail or prepaid courier to the address for such party as set out in Section 1.1(a) or (b), as applicable, and any such notice, delivery or payment so delivered or sent shall be deemed to have been given or made and received upon delivery of same or on the third (3rd) business day following the mailing of same, as the case may be. Each party may, by notice in writing to the others from time to time, designate an alternative address in Canada to which notices given more than ten (10) days thereafter shall be addressed.

(2) Notwithstanding the foregoing, any notice, delivery, payment or tender of money or document(s) to be given or made to any party hereunder during any disruption in the service of Canada Post shall be deemed to have been received only if delivered personally or sent by prepaid courier.

15.4 Registration

(1) Neither the Tenant nor anyone on the Tenant's behalf or claiming under the Tenant (including any assignee, subtenant or other occupant) shall register in full this Lease or any assignment, sublease or other instrument relating to this Lease against the Lands. The Tenant may register a notice or caveat of this Lease provided that:

- (a) a copy of the Lease is not attached; and
- (b) the Landlord gives its prior written approval of the notice or caveat.

(2) Upon the expiration or earlier termination of the Term, the Tenant shall immediately discharge or otherwise vacate any such notice or caveat.

15.5 Number, Gender, Effect of Headings

Words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders, and words importing persons shall include firms and corporations and *vice versa*. The division of this Lease into Articles and Sections and the insertion of headings are for convenience of reference only, and shall not affect the construction or interpretation of this Lease.

15.6 Severability

Should any Article or Section or part or parts of an Article or Section in this Lease be illegal or unenforceable, it or they shall be considered separate and severable from the Lease and the remaining provisions of this Lease shall remain in full force and effect and shall be binding upon the Landlord and the Tenant as though such Article or Section or part or parts thereof had never been included in this Lease.

15.7 Subdivisional Control

It is an express condition of this Lease that the subdivision control provisions of the applicable provincial legislation be complied with, if necessary. If such compliance is necessary, the Tenant covenants and agrees to diligently proceed, at its own expense, to obtain the required consent, and the Landlord agrees to co-operate with the Tenant in bringing such application.

15.8 Entire Agreement

There are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Lease, save as expressly set out or incorporated by reference herein, and this Lease constitutes the entire agreement duly executed by the parties hereto, and no amendment, variation or change to this Lease shall be binding unless the same shall be in writing and signed by the parties hereto.

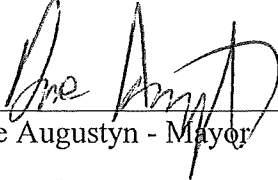
15.9 Successors and Assigns

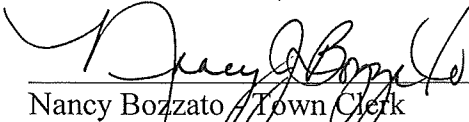
The rights and liabilities of the parties shall enure to the benefit of their respective heirs, executors, administrators, successors and assigns, subject to any requirement for consent by the Landlord hereunder.

IN WITNESS WHEREOF the parties hereto have duly executed this Lease.

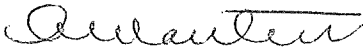
THE CORPORATION OF THE TOWN OF PELHAM

Per


Dave Augustyn - Mayor


Nancy Bozzato - Town Clerk
WELLSPRING NIAGARA CANCER SUPPORT
FOUNDATION

Per:


Ann Mantini-Celima - Executive Director


Paul Morocco - Board ViceChair

SCHEDULE "B" - LEGAL DESCRIPTION

Part of PIN 64063 - 0275(LT)

Part of Block 1, Plan 59M - 432

Town of Pelham

Designated as Part 1 on Reference Plan 59R - _____

SCHEDULE "C" - LIST OF INITIAL PLANS